

DEPARTMENT OF THE ARMY PERMIT

Permittee: Timothy B. Touchette  
Lieutenant Colonel, Corps of Engineers  
District Commander  
On Behalf of the General Public

Permit No.: 87-000-1

Processing No.:

Effective Date: September 6, 2005

Expiration Date: September 6, 2010

Affirmation Date:

Issuing Office: U.S. Army Engineer District, Buffalo  
1776 Niagara Street  
Buffalo, New York 14207-3199

**IMPORTANT:** PLEASE NOTE, WRITTEN AFFIRMATION FROM THIS OFFICE IS NOT REQUIRED, UNLESS NOTED OTHERWISE IN THE ATTACHED SPECIAL CONDITIONS AND EXCLUSIONS, PRIOR TO COMMENCING THE ACTIVITY AUTHORIZED BY THIS PERMIT. BE SURE THAT ALL PARTIES READ, UNDERSTAND AND COMPLY WITH THE TERMS AND CONDITIONS OF THIS PERMIT.

NONCOMPLIANCE WITH ANY OF THE TERMS OR CONDITIONS MAY RESULT IN AN ORDER TO REMOVE THE ACTIVITY; CIVIL AND/OR CRIMINAL PENALTIES OR BOTH.

**AUTHORITIES:** You have been authorized to undertake the activity described below pursuant to:

Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403)

**AUTHORIZED ACTIVITY:** Install and maintain open pile or floating: dock(s), deck, observation platform(s) in wetlands or other special aquatic sites, stairway(s), mooring pile(s), mooring buoy(s), swim platform, marine railway, boat hoist(s)/jet ski hoist(s), covered (not enclosed) boat slips and hoists.

**LOCATION OF THE AUTHORIZED ACTIVITY:** Navigable waters of the United States that are located within the State of New York and subject to regulation by the U.S. Army Engineer District, Buffalo.

The general public is hereby authorized by the Secretary of the Army to perform the work

authorized by this permit provided the following general and special conditions are fully complied with.

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer. The term "activity" as used in this permit includes all structures and work authorized by this permit.

#### GENERAL CONDITIONS:

1. The work authorized under this regional permit must be completed prior to the expiration date noted on the first page of this authorization. In the event that the affirmation date is less than twelve months prior to the expiration date, the regional permit will remain valid for a period of twelve months from the affirmation date. In no case shall authorization exceed twelve months beyond the expiration date. If you find that you need more time to begin and/or complete the authorized activity, submit your written request for a time extension to this office at least three months before the respective date(s).
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, unless you make a good faith transfer to a third party in accordance with General Condition No. 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you may be required to remove the structure(s) and restore the site to its original pre-project conditions.
3. If you discover any previously unknown historic or archaeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and State coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.
5. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.
6. The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any

such removal or alteration.

7. This office reserves the right to use this regional permit in combination with any existing or future nationwide, regional or individual permit or any letter of permission.

#### GENERAL PERMIT NOTIFICATION REQUIREMENTS:

**The special conditions listed in the next section identify which activities do or do not require written verification of the applicability of this general permit from the Buffalo District prior to commencement of the work.**

If your activity **DOES NOT** require notification and subsequent authorization from the Buffalo District, and you meet all of the terms and conditions of this permit, you may proceed with your work. Within 30 days of the completion of the work authorized by this permit, you are required to submit project drawings (including location map and plan view diagram) and the attached compliance certification form to the Buffalo District office.

For projects that **DO** require notification to the Buffalo District prior to commencement of the work, the following information must be submitted with the New York State Department of Environmental Conservation / U.S. Army Corps of Engineers joint application for permit:

1. Name, address and telephone number of the applicant.
2. Location map identifying project site.
3. A brief project description.
4. Project plans depicting proposed work.

Work may not proceed until written affirmation of the applicability of this permit is received from this office.

#### SPECIAL CONDITIONS:

1. Your use of the permitted activity must not interfere with the public's right to free navigation on all navigable waters of the United States.
2. Structures authorized by this permit shall not extend waterward more than 100 feet from the Ordinary High Water (OHW) shoreline or 20 percent of the waterway width, whichever is less. The waterway width is measured from the Ordinary High Water shoreline perpendicular to the centerline of the waterway.
3. A variance in the maximum offshore distance of a structure may be granted in cases where exceptions would be reasonable due to the shoreline configuration, or for structures crossing shoals, wetlands or other special aquatic sites. All variances must be approved by this office on a case by case basis.
4. Configuration of dock(s) may vary in plan (i.e. straight, T, U, or L shaped) provided the total length of all segments and separate structures does not exceed 150 feet and the surface area of the dock(s), including finger piers, deck, platform, etc. does not exceed 1200 square feet. Docks parallel to and along the shoreline are not permitted by this Regional Permit, unless a variance is granted. All variances must be approved by this office on a case

by case basis. A variance may be granted in cases where exceptions would be reasonable due to the topography of the shoreline, or for navigational reasons. The dock(s) shall not exceed 8 feet in width. Multiple docks, docks with a deck or platform may be constructed provided that the proposed and all existing structures, if any, are within the size limitations specified in this permit. Note: For the purposes of this Regional Permit, a deck is any portion of the dock that exceeds 8 feet in width.

5. Regular or irregular shaped configurations (i.e. dock[s] with a deck) are allowed in the middle or at the waterward terminus of the structure provided the surface area of the deck does not exceed 240 square feet. A variance to this condition (i.e., shoreline deck) may be granted in cases where exceptions would be reasonable due to the topography of the shoreline, or for navigational reasons. All variances must be approved by this office on a case by case basis. Only one deck per property is authorized by this permit. See Special Condition No. 6 for additional requirements on decks located in the Coastal Zone Management area.

6. For all decks located in the entire Coastal Zone Management (CZM) area and for activities and structures located in New York State Significant Coastal Fish and Wildlife Habitat areas and/or areas with approved Local Waterfront Revitalization Programs, you must furnish the New York State Department of State (NYSDOS) with a certification statement that your action is consistent with the State's Coastal Management Plan. These activities are approved by this regional permit only when you obtain an individual consistency certification concurrence for your project from the NYSDOS. No work shall be started under this permit until the concurrence has been secured or the State has failed to act on the consistency certification within six months and the certification is presumed. You must comply with all conditions of your individual Coastal certification concurrence. In addition, you must furnish the District Engineer, Buffalo District, with a copy of the CZM certification concurrence letter or a **dated** copy of the consistency certification that you provided to the NYSDOS. Pre-construction notification and written affirmation from this office of the applicability of this permit is required for any project requiring consistency from the NYSDOS.

Consistency statements should be forwarded to:

New York State Department of State  
Division of Coastal Resources  
41 State Street  
Albany, New York 12231-0001

Telephone (518) 474-6000

7. Structures authorized by this permit may cross wetlands or other special aquatic sites, but the crossing must not exceed four feet in width and shall be a minimum of four feet above the Ordinary High Water elevation. Pre-construction notification and written affirmation from this office of the applicability of this permit is required for all activities in wetlands.

8. All structures authorized by this permit must be set back a minimum of 10 feet from the common boundary line of adjoining properties that are under separate ownership. The setback is measured at the point where the common boundary terminates at the Ordinary High

Water shoreline. A variance in this distance may be granted where there are natural limiting features or limited shoreline available and coordination with adjacent property owner(s) has occurred. All variances must be approved by this office on a case by case basis.

9. The top of the dock must be a minimum of one foot above the Ordinary High Water elevation.

10. Side staving, if used, shall not extend lower than one half of the distance between the Ordinary High and Low Water levels.

11. If pressure treated wood is used for the construction of in-water structures, it must be treated with a preservative and treatment process approved by the American Wood Preservative Association. Wood treated with creosote or pentachlorophenol must be aged in the open air for at least three months prior to water use. Chromated Copper Arsenate (CCA) pressure treated wood must be clean and free of CCA surface deposits. Wood with surface deposits must be washed for at least five minutes under running water prior to use. Any wood debris such as sawdust or wash water must not enter any water body including wetlands.

12. This permit does not authorize the placement of enclosed buildings, boathouses, fuel storage tanks, sinks, toilets, showers, fuel dispensing or sanitary pump out facilities waterward of the Ordinary High Water shoreline.

13. Only one swim platform per property owner is authorized by this permit. The surface area of a swim platform shall not exceed 200 square feet, and shall not be connected to other structures.

14. Only one marine railway per property owner is authorized by this permit.

15. The total surface area of all boat and jet ski hoist(s) and covered boat slips, shall not exceed 900 square feet.

16. The total surface area of all observation platform(s) located in wetlands or other special aquatic sites shall not exceed 900 square feet. The authorization of observation platform(s) located in wetlands or other special aquatic sites must be for interpretive or educational purposes. Access to observation platforms may cross wetlands or other special aquatic sites, but the crossing must not exceed four feet in width and shall be a minimum of four feet above the Ordinary High Water elevation. Pre-construction notification and written affirmation from this office of the applicability of this permit is required for activities in wetlands.

17. All mooring buoys must be approved by the Ninth Coast Guard District. Information concerning the approval process may be obtained by calling (216) 902-6074 or by writing to:

Commander (OAN)  
Ninth Coast Guard District  
ATTN: Private Aids to Navigation  
1240 East Ninth Street  
Cleveland, Ohio 44199-2060

18. The District Commander reserves the right to include any additional special conditions or require an individual permit as may be necessary to safeguard the public interest or protect important public resources on a case by case basis.

19. Construction should be scheduled for a time of year when water levels are low and fish spawning activities are not occurring.

20. **Pre-construction notification and written affirmation from this office of the applicability of this permit is required for activities located within sensitive areas, as identified on the attached list.** For activities that may affect Federally-listed endangered or threatened species or designated Critical Habitat, the notification must include the name(s) of the endangered or threatened species that may be affected by the proposed work or that utilize the designated Critical Habitat that may be affected by the proposed work. The Buffalo District shall notify the U.S. Fish and Wildlife Service (USFWS) if any listed species or designated Critical Habitat might be affected or is in the vicinity of the project or is located in the designated Critical Habitat. The Corps will provide the USFWS a ten day review period to conduct specific reviews for the protection of Federally threatened or endangered species. Additional time may be required if further consultation is necessary. **Applicants shall not commence work in these waterways** under this permit until the requirements of the Endangered Species Act have been satisfied and the applicant receives written verification that the work may proceed. Note that as a result of formal or informal consultation with the USFWS, the District Engineer may add species-specific conditions to the permit.

21. This permit does not authorize work on barrier beaches or areas designated as erosion hazard areas under the New York State Coastal Erosion Hazards Area Act.

22. **Pre-construction notification and written affirmation from this office of the applicability of this permit is required for the following: any variances noted in the conditions above; activities in wetlands; projects requiring coastal zone consistency as required in Special Condition No. 6; and projects located in sensitive areas, as noted in Special Condition No. 20.**

#### EXCLUSIONS:

This permit does not apply to:

1. Any freshwater wetland as defined in Department of the Army permit regulations at Title 33 of the Code of Federal Regulations, Parts 320 et. seq., or other special aquatic sites as defined in the U.S. Environmental Protection Agency Guidelines for Specification of Disposal Sites for Dredged or Fill Material at Title 40 of the Code of Federal Regulations, Part 230, except for structures described in Special Conditions 6, 7 and 16 of this permit.

2. Activities that have an effect on historic, cultural or archaeological sites identified in the latest published version of the National Register of Historic Places, or sites eligible for inclusion in this register, unless the State Historic Preservation Officer makes a determination that the effect will not be adverse.

3. Activities that have an effect on sites included in the latest published version of the

National Register of Historic Landmarks, which are published periodically in this register, unless the State Historic Preservation Officer makes a determination that the effect will not be adverse.

4. Any other areas named in Acts of Congress or Presidential Proclamations as National Wilderness Areas, National Recreational Areas, Lakeshores, Parks, Monuments and such areas as may be established under Federal Law for similar and related purposes, such as estuaries and marine sanctuaries, except where specifically authorized by this regional permit.

5. Activities that have an effect on a component of the National Wild and Scenic Rivers System, or areas listed in the Nationwide Rivers Inventory, Final List of Rivers for New York as published by the U.S. Department of the Interior, or in a component of a State Wild and Scenic River. Activities located in these areas will be evaluated on a case by case basis, which will include coordination with the National Park Service and/or the New York State Department of Environmental Conservation.

6. Activities that have an effect on rivers currently being studied at the direction of Congress as potential additions to the National Wild and Scenic Rivers System, or rivers for which Wild and Scenic Rivers studies have been completed and forwarded to Congress and which Congress is still considering. Activities located in these areas will be evaluated on a case by case basis, which will include coordination with the National Park Service.

7. Structures which may jeopardize the continued existence of species listed as endangered or threatened under the Endangered Species Act (ESA) of 1973, as amended, or result in the likelihood of the destruction or adverse modification of a habitat which is determined by the Secretary of the Interior or Commerce, as appropriate, to be a critical habitat under the Endangered Species Act of 1973, as amended. No activity is authorized under this Regional Permit which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act, or which will destroy or adversely modify the Critical Habitat of such species. Authorization of an activity by this Regional Permit does not authorize the 'take' of a threatened or endangered species as defined under the ESA. In absence of separate authorization (E.G., an ESA Section 10 Permit, a Biological Opinion with 'incidental take' provisions, etc.) from the U.S. Fish and Wildlife Service, both lethal and non-lethal 'takes' of protected species are in violation of the ESA.

8. Any proposal that would result in fragmentation of the contiguous wetlands or essentially overcrowd the wetland with docks and related human activity so as to adversely impact the functions and values of the wetland will not be authorized by this regional permit.

#### LIMITS OF THIS AUTHORIZATION:

1. The granting of this permit does not obviate the need to obtain other Federal, State or local authorizations as required by law. Specifically, a permit pursuant to the Environmental Conservation Law Articles 15, 24 or 34 may be required from the New York State Department of Environmental Conservation.

2. Issuance of this permit does not grant you any property rights or exclusive privileges, nor does it authorize any injury to the property or rights of others.

3. This permit does not authorize interference with any existing or proposed Federal project, nor does it convey any authority to interfere with the right of the public to free navigation on all navigable waters of the United States.

LIMITS OF FEDERAL LIABILITY: In issuing this permit, the Federal Government does not assume any liability for the following:

1. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
2. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
3. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
4. Design or construction deficiencies associated with the permitted work.
5. Damages associated with any future modification, suspension, or revocation of this permit.

RELIANCE ON APPLICANT'S DATA: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

RE-EVALUATION OF THE DECISION TO GRANT A REGIONAL PERMIT: This office may re-evaluate its decision on this permit at any time circumstances warrant. Circumstances that could require a re-evaluation include, but are not limited to, the following:

1. You fail to comply with the terms and conditions of this permit.
2. The information provided by you in support of your application proves to have been false, incomplete, or inaccurate.
3. Significant information surfaces which this office did not consider in reaching the original public interest decision.


Such a re-evaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in Title 33 of the Code of Federal Regulations Part 325.7 or enforcement procedures such as those contained in Title 33 of the Code of Federal Regulations Parts 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may, in certain situations (such as those specified in Title 33 of the Code of Federal Regulations Part 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

EXTENSIONS: General Condition 1 establishes a time limit for the completion of the



activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a re-evaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit. Extension requests must be submitted in accordance with the directions given in General Condition 1.

BY AUTHORITY OF THE SECRETARY OF THE ARMY:

  
\_\_\_\_\_  
District Commander

06 Sept 05  
\_\_\_\_\_  
Date

When the property associated with the work authorized by this permit is sold or transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

\_\_\_\_\_  
Transferee

\_\_\_\_\_  
Date

**Table 1. Locations of Federally-Listed Threatened and Endangered Species and Candidate Species that may be affected by Regional Permit 87-000-1, Installation and maintenance of open pile or floating dock(s), dock(s) with a deck, observation platforms(s) in wetlands or other special aquatic sites, stairways, mooring pile(s), mooring buoy(s), swim platform, marine railway, and boat hoist(s)(covered or open) within the Jurisdiction of the U.S. Army Corps of Engineers, Buffalo District, as of April 2005.**

County	Townships/Watershed	Species	Avoidance
Broome	Sanford	Bald Eagle	1
Cayuga	Conquest, Cato	Bald Eagle	1
Cattaraugus	Allegany, Coldspring, Elko, Perrysburg, Allegany and Cattaraugus Indian Reservations, Salamanca	Bald Eagle	1
	Hydrologic Unit Codes 05010001 and 05010002	Rayed Bean	1
Chautauqu	Chautauqua, Westfield, Ripley, Hanover	Bald Eagle	1
	Hydrologic Unit Codes 05010001, 05010002, and 05010004	Rayed Bean	1
	Hydrologic Unit Code 05010002	Clubshell	
Erie	Cattaraugus Indian Reservation	Bald Eagle	1
Genesee	Alabama	Bald Eagle	1
	Bergen, Byron	Bog Turtle, Houghton's Goldenrod, Eastern Massasauga	1
Jefferson	Orleans, Brownville	Bald Eagle	1
	Within 40 miles of Glen Park	Indiana Bat	2
	Henderson, Ellisburg	Piping Plover	1
Livingston	Springwater, Conesus	Bald Eagle	1
Monroe	Irondequoit, Webster	Bald Eagle	1
Onondaga	Cicero	Bog Turtle, Eastern	1
	Within 40 miles of Jamesville	Indiana Bat	2
	Lysander, Van Buren	Bald Eagle	1
Ontario	Canadice, South Bristol	Bald Eagle	1

Oswego	Amboy, Oswego, Richland, Williamstown	Bog Turtle	1
	Richland, Sandy Creek	Piping Plover	1
	Granby, Redfield	Bald Eagle	1
St.	Hammond, Parishville, Piercefield	Bald Eagle	1
Schuyler	Dix	Leedy's Roseroot	1
Seneca	Tyre	Bald Eagle	1
	Junius	Bog Turtle	1
Steuben	Erwin	Bald Eagle	1
Wayne	Arcadia	Bog Turtle	1
	Savannah	Bald Eagle	1
Yates	Starkey	Leedy's Roseroot	1
	Middlesex, Italy	Bald Eagle	1

# 1 Avoidance Action Codes:

- 1) The Corps must give the Service 10 days notice to review project and provide notice whether additional time for a more in-depth review and/or further coordination or consultation pursuant to the Endangered Species Act (ESA) (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*) will be needed.
- 2) The Corps must give the Service 10 days notice to review any project that includes removal of trees which are suitable habitat for Indiana bats within 40 miles of Glen Park, Jefferson County, or Jamesville, Onondaga County, New York, and provide notice whether additional time for a more in-depth review and/or further ESA coordination or consultation will be needed. Suitable potential summer roosting habitat is characterized by trees (dead, dying or alive) or snags, greater than or equal to 5 inches diameter breast height (d.b.h.) with exfoliating or defoliating bark, or containing cracks, crevices or holes that could potentially be used by Indiana bats as a roost. However, maternity colonies generally use trees greater than or equal to 9 inches d.b.h. Overall, structure appears to be more important than a particular tree species or habitat type. Additional information on potentially suitable summer habitat can be found on our website at <http://nyfo.fws.gov/es/ibatdraft99.pdf>. These notifications should include information on any suitable habitat trees than may be removed (estimate of the number of suitable trees or the area, in acres, containing suitable trees  $\geq$  5 inches d.b.h. if within 5 miles of Glen Park or 9 inches d.b.h. if greater than 5 miles). This information will help determine whether Indiana bats may be adversely impacted and if further ESA coordination will be needed.

## IMPORTANT

This form must be completed and mailed to the District Commander upon completion of any work authorized by Department of the Army Permit No. 87-000-1

Date: \_\_\_\_\_

Regulatory Branch  
U.S. Army Corps of Engineers  
1776 Niagara Street  
Buffalo, New York 14207

To whom it may concern:

You are hereby notified that the work authorized under Department of the Army Regional General Permit No. 87-000-1, was completed on or about \_\_\_\_\_  
(Month/Day/Year)

The work undertaken was as follows (detailed project drawings\* are required to supplement written description): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

\*detailed location map and plan view diagram (identifying property and structure dimensions)

I certify that I have compiled with the terms and conditions of the Regional Permit 87-000-1.

Applicant Information:

Name:

Mailing Address:

Phone Number:

Site Information (Please attach a location map depicting work site):

Street Address:

Town/Village/City:

County:

State: New York

By: \_\_\_\_\_  
(authorized Signature) (Title)

Date: \_\_\_\_\_